



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 25, 2018

CASE NUMBER: 2018OPA-0308

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee engaged in biased policing towards the Complainant and that he failed to report the Complainant’s allegation of bias to a supervisor.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) responded to a call stemming from a silent alarm that had activated at a business. NE#1 did not observe any criminal activity at the scene. NE#1 walked by the Flat Stick Pub and into the adjoining alley. He then double-backed and made contact with the Complainant. At that time, the Complainant was lying inside the doorway of the Flat Stick Pub. The door, which was set back in an alcove, was closed. The business also appeared not to be open at that time. The Complainant, who is African-American, was wearing an overcoat and a blue ski hat. NE#1 activated his Body Worn Video (BWV), told the Complainant that he was being audio and video recorded, and informed him that he was trespassing and needed to leave. The Complainant replied that he worked at the pub. NE#1 repeated: “you work here?” NE#1 asked him what the pub was called. The Complainant showed him his shirt, which had Flat Stick Pub written on it. NE#1 read “Flat Stick Pub” off the shirt. NE#1 asked for the Complainant’s name and he provided it. NE#1 then went inside of the pub. The Complainant followed him downstairs and said that he cleaned there. NE#1 continued to question him. The Complainant stated that he had a key to the building. He also turned the music down using his phone. The Complainant further told NE#1 that there was a broom in the doorway, which supported the Complainant’s assertion that he worked there.

NE#1 and the Complainant went back upstairs. NE#1 read him the conditions of entry on the property. The Complainant began to get extremely upset. NE#1 repeatedly told the Complainant that he was trespassing. NE#1 asked him to use his key to open the door and the Complainant refused. The Complainant asked NE#1 how he would have been able to turn the music down in the pub using his phone if he did not work there. The Complainant asked NE#1 for his name and NE#1 provided his last name. The Complainant asked NE#1 for his first name and he refused to provide it.



At that point, an employee of a coffee house next door came out and verified that the Complainant worked at the location. NE#1 again told the Complainant that he was trespassing. The Complainant demanded that NE#1 call for his sergeant and NE#1 did so. The Complainant alleged that he was only stopped because he was African-American. He further alleged that NE#1 was racist. The Complainant continued to grow emotional and angry.

NE#1's supervisor arrived and spoke with the Complainant. The Complainant remained very upset. He alleged that he was being harassed and that there was no basis to stop him. After the sergeant spoke with the Complainant for nearly 28 minutes, his anger lessened and he walked away. This had much to do with the fact that NE#1 apologized to the Complainant. At that time, the Complainant put out his hand; however, NE#1 told him that he was not going to shake his hand. NE#1 also spoke with his sergeant for a period of time. During that conversation, NE#1 acknowledged that the Complainant's ski hat had the name of the pub on it, but he stated that he did not recognize this at the time. NE#1 then gave his card to the Complainant and left the scene.

The Sergeant made an OPA referral based on the fact that NE#1 failed to notify him of the Complainant's allegation of biased policing. OPA initiated this case and added an allegation concerning the Complainant's allegation of bias on the part of NE#1. As part of its investigation, OPA interviewed both the Complainant and NE#1.

The Complainant told OPA that he believed that he was stopped because he was African-American and because he appeared to be homeless. He asserted that this was wrong. He did not understand how he could be trespassed from a place that he worked and where the owner did not request that. He stated that he would have been fine with the interaction had NE#1 left him alone when he informed NE#1 that he worked at the pub. But when NE#1 persisted and did not believe him, this caused the Complainant to believe that the stop was based on bias. The Complainant said that he grew upset because he felt that NE#1 was not answering his questions.

NE#1 denied engaging in biased policing based either on the Complainant's race or housing status. He stated that the only reason he contacted the Complainant was because he was investigating whether the Complainant was trespassing. NE#1 admitted not informing his supervisor of the bias allegation. He further stated that he had learned some lessons from this stop.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is.

While NE#1 called his supervisor to come to the scene, he did so because the Complainant asked for a supervisor. He did not call the supervisor to the scene to respond to the bias allegation as he was required to do. Moreover, even after the supervisor arrived at the scene, NE#1 did not inform his of the allegation of biased policing. This failure to notify a supervisor as required resulted in the supervisor initiating this complaint with OPA.



At his OPA interview, NE#1 acknowledged that he failed to comply with the requirements of this policy. He explained that the bias allegation “slipped his mind” and he forgot to notify his supervisor. He based this on how upset the Complainant was and stated that this distracted him.

I am sure that NE#1’s account is true – under the circumstances of this case, he simply forgot to comply with the elements of this policy. Indeed, had he intended to intentionally cover up his behavior and the Complainant’s allegations, it follows that he would not have called a supervisor at all. That being said, this is a policy of significant importance to the Department. Bias allegations are taken very seriously and it a priority of the Department that such allegations are timely and thoroughly investigated. This policy is purposed to ensure that this occurs. Moreover, this is not a complex or esoteric policy. Instead, it is one of the most fundamental and simple dictates for officers – if someone makes an allegation of biased policing, notify a supervisor, no matter what the circumstances and whether the allegation has merit. When NE#1 did not do so here, he violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

At the scene and during his OPA interview, the Complainant contended that he was stopped by NE#1 because he was African-American and/or homeless. NE#1 denied that this was the basis for the stop. NE#1 asserted that he believed that the Complainant was trespassing by laying in the doorway of the pub.

Based on my review of the record, I find insufficient evidence to determine that the stop was based on bias. In making this determination, however, I strongly empathize with the Complainant. The Complainant was doing nothing wrong. He was taking a break outside of his place of business and was laying down because he had pain to his leg. He told the officer that he worked at the pub and he had a hat and shirt with “Flat Stick Pub” written on it. However, NE#1 still did not believe him and repeatedly accused him of trespassing. I cannot imagine how frustrating this must have been. Moreover, even if bias cannot be proved by the requisite evidentiary standard, the Complainant’s feeling that he was stopped for an impermissible reason was valid and understandable.

Even though I do not recommend that this allegation be Sustained, I think there were a number of things that NE#1 could have done better during this incident. For example, instead of immediately accusing the Complainant of trespassing, perhaps it would have been more effective to ask him what he was doing and, thus, determine whether he had a lawful reason for being there. NE#1 told both the Complainant and his Sergeant that he was “investigating” the trespass; however, he asked very few questions and, instead, made numerous accusations of criminal activity. NE#1 appeared to recognize this at his OPA interview and, hopefully, he will try to approach these types of situations differently in the future. As another example, it is unclear to me why NE#1 continued to doubt the Complainant even though every piece of evidence pointed to the fact that he was not trespassing. This included: the



fact that he was wearing a hat and shirt with the pub's name on it, the door to the pub was unlocked, the Complainant turned the music down in the pub using his phone, the Complainant stated that he had been cleaning the pub and there was a broom by where he had been laying; and the Complainant asserted that he had a key to the pub. It appears to OPA that NE#1 became fixated on his belief that the Complainant was trespassing. The question arises whether NE#1 would have had that same belief had the Complainant not appeared as he did. This question is unanswerable for OPA and certainly both NE#1 and the Complainant had different opinions as to the answer.

Lastly, while I appreciate that NE#1 apologized to the Complainant, I do not understand why NE#1 refused to shake the Complainant's hand. This appeared to be the least he could have done given what had just occurred and given how upset and insulted the Complainant was for being stopped when he had not committed a crime.

I note that, when asked what remedy he was seeking for this case, the Complainant responded that he wanted NE#1 to receive additional training. I find that this is a reasonable request. As such, and given the aspects of the stop that NE#1 could have handled differently that are identified above, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should review the video of this stop with him. His chain of command should discuss the content of this DCM with him, as well as any other issues that it identifies. NE#1's chain of command should go over with NE#1 some alternative strategies and approaches he could have utilized during his interaction with the Complainant that may have been more effective. This counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**